Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Chilliwack River Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, OLC, FF

Introduction

This hearing was scheduled in response to the tenants Application for Dispute Resolution, in which the tenants requested an Order the landlord comply with the Act, compensation for loss of quiet enjoyment and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

On July 30, 2015 the tenant applied for dispute resolution requesting the landlord be Ordered to supply a copy of the tenancy agreement and a Park map showing the site, from a fixed point. The landlord has provided the tenant with these documents.

On July 24, 2015 the Residential Tenancy Branch (RTB) received an amended application from the tenant, requesting compensation in the sum of $2,000.00 for a loss of quiet enjoyment.

The landlord confirmed receipt of the hearing documents and evidence supplied by the tenant, within the required time limits.

Issue(s) to be Decided

Is the tenant entitled to compensation for loss of quiet enjoyment in the sum of $2,000.00?

Background and Evidence

The tenancy commenced on May 17, 2014, site rental was $421.71 and effective June 1, 2015 increased to $432.25, due on the first day of each month.

The owner of the Park has a manager who acts on his behalf and is able to respond to tenant concerns. The term landlord in this decision refers to the Park owner and agent as one entity, unless otherwise stated.

A copy of the tenancy agreement and Park Rules was supplied as evidence.

The tenant submits that since her initial complaint made to the landlord on May 28, 2014 to date, she has suffered a loss of quiet enjoyment equivalent to one-half the value of the tenancy, to a total of $2,000.00.

The tenant pointed to a number of the Park Rules she believes have not been enforced. These include the need to keep sites clean and orderly (#12); no street parking (#18); no excessive noise from motorcycle's or vehicles (#19); no commercial enterprises (#20); the care of sites (#23); and cooperation of all tenants (#29).

The tenant supplied copies of emails with photos attached, sent to the landlord. Coloured photos of the tenant's site and a neighbouring site were also supplied.

On May 28, 2014 the tenant complained about the unkempt state of the site directly across the road, parking on the road and lawn, noisy trucks, the presence of a commercial business and that the tenant's dog runs loose. On the same day the landlord responded and told the tenant they were dealing with the neighbour and hoping for resolution. The next day the landlord confirmed that the issue on the neighbouring site across the road from the tenants' site had been long-standing and that there had been a problem with adherence to property standards.

On June 7, 2014 the tenant emailed the landlord regarding an additional vehicle being parked on the road, in contravention of the Park Rules. The tenant complained that the neighbours property was unsightly, that a business was being run from the site, the dog was running loose and ATV"s were being used at all hours of the day, causing a disturbance.

On June 8, 2014 the landlord replied, reminding the tenant that the agent should be contacted, not the Park owner. The landlord explained that they were working with the neighbour to address the issues. The landlord said there were currently no rules prohibiting occupants from using ATV's and that the tenant was not technically operating a business form his site.

The tenant wrote the landlord on June 8, 2014 to reiterate her belief the neighbour was running his business from the site, that his trucks blocked traffic and that use of ATV's should occur during the day, not after 10 p.m. The tenant also pointed out that someone was riding a bike outside of the Park speed limit.

On June 20, 2014 the tenant sent the landlord an email to report she could see the neighbours truck parked on the front lawn of his site and on the roadway. The tenant said she had reported the issues to the Regional District. A second email, sent to the landlord 14 minutes later acknowledged that the Park manager was too busy dealing with emergencies to take care of trivial matters and that other agencies such as the SPCA, Regional District and tenancy branch. The tenant informed the landlord that she had made a report to the Regional District and that the landlord would be fined.

The tenant supplied copies of local zoning bylaws related to the use of front yard space for off-street parking and the presence of nuisance and processing materials on property. On August 23, 2014 the tenant emailed the local Regional District staff to follow-up on her complaint. The tenant was sure the neighbour was keeping chemicals on his property as she could see gas cans and drums. On August 25, 2014 the Regional District staff member replied that they were investigating. On September 12, 2014 the tenant sent the Regional District a picture of the neighbours truck parked on his front lawn. A second photo of the neighbouring site was sent to the staff on September 18, 2014.

On September 19, 2014 the Regional District staff member confirmed that they attended at the site on that date and found no contraventions and that the file was now closed. The investigator noted that the Park regulations were posted on the common building for tenants to see and that internal Park rules existed for parking offences. The tenant was referred to the Park manager.

The tenant did not email the landlord again until July 15, 2015, in order to provide some photographs she would reply upon at her hearing. The tenant informed the landlord that she would now seek compensation.

The tenant said she had multiple conversations with the landlord between June 20, 2014 and July 15, 2015 but she could not recall the dates of these conversations. The tenant said she gave up complaining as nothing was being done to rectify the situation.

The tenant said that the neighbour had also dumped some household garbage in a lot behind her site, which is a parking area used for tenant vehicles. The landlord had been made aware of the garbage but it has not been cleaned up and it attracting rats.

The tenant said that the noise from the neighbours ATV occurred during the summer of 2014 and that she has not seen or heard him on the ATV for some time.

The tenant made a complaint to the local Member of the Legislative Assembly. The tenant supplied letters of support from two past residents of the Park and three who currently reside in the Park.

The tenant supplied copies of photographs of her home, which is neat and tidy and the neighbours unit, which showed vehicles parked on the road and signs of items such as a cement mixer, wheelbarrows, a bin, buckets and hand tools. The tenant recently checked with the Better Business Bureau and noted that the neighbour lists his business address as his home site. The tenant said the neighbour will clean up his yard one day and that the next it has reverted back to being unsightly.

The tenants' witnesses did not testify as the tenant confirmed they would reiterate what was contained in their letters or repeat the submissions made by the tenant. The landlord did not wish to question the tenants' witnesses. The letters outline issues in the Park related to enforcement of the Rules and reiterate the problems associated with the tenant's neighbour and confirm the tenant's concerns.

The owner responded that he has run this Park since 1976 and that it has been a peaceful place. The landlord's manager has the right to enforce the Park Rules, but this can sometimes be difficult and take time. The landlord was not certain of the ownership

of the home on the site in question and has now taken action against both occupants of the neighbouring home.

Initially the landlord made attempts to have the occupants comply with the Park Rules. When they failed to do so a 1 month Notice ending tenancy for cause was issued on March 5, 2015 with an effective date at the end of May 2015. After serving the Notice the landlord approached the occupants to discuss the end of the tenancy. The occupants said they would prepare the home for sale and would do so within three months. The landlord accepted this with the expectation he could proceed with eviction if the occupants failed to vacate.

When the owner returned to the Park three months later there was no sign that the occupants were going to comply with the need to vacate and sell the home, as was expected. As the occupants had done nothing to comply the landlord again told them to vacate. At this time a letter was issued to each of the occupants warning the landlord would proceed with a hearing.

The landlord now has a hearing scheduled in October, 2015, where he is requesting an Order of possession based on the undisputed Notice. The occupants have told the landlord they are angry about the complaints made and that they are now refusing to vacate.

The landlord stated that he can see no basis for a monetary claim by the tenant as she has not proven any kind of loss that can be converted to a monetary loss. The landlord said he understands the site across the road from the tenant is not in good condition and they are taking steps to deal with the situation. There is no evidence of any chemicals on the property and the Regional District found no contraventions.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the Act and proof that the party took all reasonable measures to mitigate their loss.

Section 28 of the Act provides:

Protection of tenant's right to quiet enjoyment

> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) Reasonable privacy;*
> *(b) Freedom from unreasonable disturbance;*
> *(c) Exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
> *(d) Use of common areas for reasonable and lawful purposes, free from significant interference*

Residential Tenancy Branch (RTB) policy suggests that the loss of quiet enjoyment can include frequent interference by a landlord or, if preventable by the landlord, standing by and allowing others to engage in behaviour that interferes with a tenant.

Policy suggests that such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

From the evidence before me the only issue raised by the tenant that might support a claim for loss of quiet enjoyment is the reported noise caused by the neighbour. However, there was no evidence before me, other than several reports made to the landlord in 2014 that this was occurring on a frequency that would support compensation to the tenant.

I have considered whether the landlord has failed to meet their obligation under the Act and find that appropriate steps appear to have been taken to have the neighbour comply with Park Rules. Tenants are not entitled to be informed of steps a landlord may be taking with other occupants of the Park and so I find it is reasonable to accept that the tenant would not be aware of any attempts made to have the neighbour comply with Park rules. These were revealed during the hearing, with the landlord explaining the eviction process that commenced in March 2015. The landlord has attempted to end the tenancy amicably, but has now been forced to apply requesting an Order of possession.

I find that there is no basis for a monetary claim in relation to a loss of quiet enjoyment. The neighbour has parked trucks on the road and on the lawn of his site and the tenant has been able to view the presence of tools and other work-related items on the neighbouring property. However, I find on the balance of probabilities that these issues fail to be so significant as to support a claim for loss of quiet enjoyment or the enjoyable use of the tenant's site. The presence of vehicles and tools, while they are not to the taste of the tenant and may not comply with some Park Rules, fail to meet the standard suggested by RTB policy. The view from the tenants' site may not be as visually pleasant as the one toward her site, I find on the balance of probabilities, that the tenant has not suffered a loss of value in her tenancy.

Further, the tenant has reported what she viewed as bylaw infractions to the Regional District who then determined the complaints were unfounded. The tenant made allegations of the presence of chemicals on the neighbouring site and these allegations were not proven.

The landlord has demonstrated that steps are being taken to address the problems with the neighbour and any failure to comply with Park Rules. I note that the Notice ending

tenancy was issued during a time when the tenant had not been emailing the landlord and in the absence of any confirmed communication with the tenant.

Therefore, I find that the tenants' application is dismissed.

In relation to any household garbage that has been left in the lot directly behind the tenant's site, I suggest the landlord ensure that garbage has been removed.

Conclusion

The application is dismissed.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 01, 2015

Residential Tenancy Branch